

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DIAMOND JUNIOR,

Plaintiff,

v.

18-CV-1014
DECISION AND ORDER

ERIE COUNTY MEDICAL CENTER,

Defendant.

On September 14, 2018, the plaintiff commenced this action alleging employment discrimination. Docket Item 1. On October 18, 2018, this Court referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 6. On October 12, 2018, the defendant moved to dismiss, Docket Item 2; on November 15, 2018, the plaintiff responded, Docket Item 10; and on November 19, 2018, the defendant replied, Docket Item 9. On November 29, 2018, Judge McCarthy issued a Report, Recommendation, and Order ("RR&O") finding that the defendant's motion should be denied. Docket Item 11.¹ The parties did not object to the RR&O, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's

¹ The RR&O also denied the plaintiff's motion for service by the United States Marshal, Docket Item 8. Because the plaintiff did not ask this Court to review that order, this Court will not address it.

recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's RR&O as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to deny the defendant's motion.

For the reasons stated above and in the RR&O, the defendant's motion to dismiss, Docket Item 2, is DENIED, and the plaintiff is given an additional sixty days to complete proper service and file proof of service with the Court.² The case is referred back to Judge McCarthy for further proceedings consistent with the referral order of October 18, 2018, Docket Item 6.

SO ORDERED.

Dated: February 6, 2019
Buffalo, New York

s/ Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE

² The Court recognizes that the plaintiff filed proof of service on December 17, 2018, Docket Item 12, and so this issue may be moot.